

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON WEDNESDAY, 8<sup>TH</sup> DAY OF JULY, 2020**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJ**

**SUIT NO. FCT/HC/CV/3165/2012**

**BETWEEN**

1. JUSTIN-J GLOBAL VENTURES LTD.
2. KOSUN CHEMICALS NIG. LTD.



**PLAINTIFFS**

**AND**

1. Q-H MULTICONCEPT LTD.
2. UNYOGBA BLOCK MOULDING & SALES LTD.
3. NEWLAND HABITAT LTD.
4. HON. MINISTER, FEDERAL CAPITAL TERRITORY



**DEFENDANTS**

## **JUDGMENT**

The plaintiffs [the claimants] commenced this suit on 30/4/2012 against the defendants vide writ of summons. The 1<sup>st</sup> defendant was sued as "*Quality Homes Multiconcept Ltd.*" On 24/7/2013, the name of the 1<sup>st</sup> defendant was changed to "*Q-H Multi Concepts Ltd.*" on the oral application of the plaintiffs' counsel at that time [Sam KargboEsq.].

The pleadings in this case are:

- i. Plaintiffs' amended statement of claim filed on 3/7/2013;
- ii. 1<sup>st</sup> defendant's amended statement of defence and counter claim filed on 4/12/2017;
- iii. 2<sup>nd</sup>& 3<sup>rd</sup> defendants'amended joint statement of defence andthe 3<sup>rd</sup> defendant's counter claim filed on 18/1/2018;
- iv. 4<sup>th</sup> defendant's statement of defence filed on 6/8/2013; and
- v. Plaintiffs' amended defence to the 1<sup>st</sup>, 2<sup>nd</sup>& 3<sup>rd</sup> defendants' amended counter claim filed on 30/4/2018.

In their amended statement of claim filed on 3/7/2013, the plaintiffs claimed 14 reliefs, among which are:

1. A declaration of this Honourable Court that the 1<sup>st</sup>, 2<sup>nd</sup>& 3<sup>rd</sup> defendants are trespassers to the 1<sup>st</sup> plaintiff's property situate and known as Plot 4, in Cadastral Zone D07 of Sabo Gida District, FCT Abuja, measuring about 485752.49m<sup>2</sup> and more particularly shown in the plan attached to the Right of Occupancy/the allocation christened "*Mass Housing Development Programme within the Federal Capital Territory*".
2. An order of this Court declaring the documents relied upon by 1<sup>st</sup>-3<sup>rd</sup> defendants and filed and/or exhibited in proof of their counter claim that the 1<sup>st</sup> plaintiff transferred title in Plot Number 4 in Cadastral Zone D07 of Sabo Gida, measuring 485752.49m<sup>2</sup> to them, null, void and of no legal consequence as they are not made by the 1<sup>st</sup> plaintiff.

3. An order of the Court awarding N100,000,000.00 damages against the 1<sup>st</sup> to 3<sup>rd</sup> defendants of the defendants for trespass to the 1<sup>st</sup> plaintiff's property known as Plot 4, Sabo Gida District, Abuja.

Raphael Onwuzuligbo, an Assistant Superintendent of Police, testified as the PW1 on 20/1/2014 in proof of the plaintiffs' case. He adopted his statement on oath filed on 16/8/2013 and tendered Exhibits A, B & B1. On that day, only Akin Akintan Esq. [1<sup>st</sup> defendant/counter claimant's counsel] cross examined PW1. On 18/4/2017, plaintiffs filed a notice of discontinuance of their suit. On 15/5/2017, the plaintiffs' counsel, O. U. Heavens Esq., adopted the notice of discontinuance. The plaintiffs' suit was dismissed.

In its counter claim, the 1<sup>st</sup> defendant/counter claimant claims the following reliefs against the plaintiffs and the 4<sup>th</sup> defendant:

- i. A declaration that having regard to the Power of Attorney [sworn to on the 24<sup>th</sup> of March, 2011) executed between the counterclaimant and the 1<sup>st</sup> defendant to the counter claim as well as the totality of the conduct of the two parties, a subsisting contract of sale of 28 hectares out of the entire parcel of land constituting Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja, exists between the 1<sup>st</sup> defendant to the counterclaim and the counterclaimant.
- ii. A declaration that the subsisting contract between the counterclaimant and the 1<sup>st</sup> defendant to the counterclaim precludes the 1<sup>st</sup> defendant to the counterclaim from attempting to resell/re-alienate its interest in the

aforementioned 28 hectares of land [subsumed in Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja] to the 2<sup>nd</sup> plaintiff or any other person whatsoever.

- iii. A declaration that the recent posturing and conducts of the 1<sup>st</sup> defendant to the counterclaim amount to a unilateral repudiation/negation/breach of the subsisting contract between the counterclaimant and the 1<sup>st</sup> defendant to the counterclaim.
- iv. An order of specific performance mandating/compelling 1<sup>st</sup> defendant to the counterclaim to honour the contract of sale of the 28 hectares of land [subsumed in Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja] between the counterclaimant and the 1<sup>st</sup> defendant to the counterclaim.
- v. A perpetual injunction restraining the 1<sup>st</sup> defendant to the counter claim whether by its agents, assigns, privies, servants, officers or any person howsoever called from [further] wrongfully attempting to repudiate/negate the contract of sale of land [subsumed in Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja] between the counterclaimant and the 1<sup>st</sup> defendant to the counterclaim.
- vi. A perpetual injunction restraining the 2<sup>nd</sup> defendant to the counter claim whether by its agents, assigns, privies, servants, officers or any person howsoever called from [further] wrongfully attempting to

interfere with the lawful occupation of Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja by the counterclaimant.

- vii. An order directing/compelling the 4<sup>th</sup> defendant/counter claimant [whether by himself, his agents, assigns, privies, servants, officers, agencies and bodies under his watch or any person howsoever called] to accord forthwith full recognition and all the requisite incidents of ownership to the 1<sup>st</sup> defendant/counterclaimant regarding the 28 hectares of Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja as depicted in the schedule [i.e. the area covered by Beacon Numbers: PB194 – PB195 – PB196 – PB197 – PB198 – PB199 – PB200 – PB201 – PB202 – PB203 – PB204 – PB182 – PB183 – PB184 – PB185] upon the 1<sup>st</sup> defendant/counterclaimant's full completion of the payment of the total sum of N200,000,000 [Two Hundred Million Naira] only to the 1<sup>st</sup> plaintiff/defendant to the counterclaim.
- viii. An order directing/compelling the 4<sup>th</sup> defendant/counter claimant [whether by himself or his agents, assigns, privies, servants, officers, agencies and bodies under his watch or any person howsoever called] to issue forthwith a new Certificate of Occupancy in favour of the 1<sup>st</sup> defendant/counterclaimant regarding the 28 hectares of Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja as depicted in the schedule [i.e. the area covered by Beacon Numbers: PB194 – PB195 – PB196 – PB197 – PB198 – PB199 – PB200 – PB201 – PB202 – PB203 – PB204 – PB182 – PB183 – PB184 – PB185] upon the 1<sup>st</sup>

defendant/counterclaimant's full completion of the payment of the total sum of N200,000,000 [Two Hundred Million Naira] only to the 1<sup>st</sup> plaintiff/defendant to the counterclaim.

[OR ALTERNATIVELY TO RELIEFS *iv to vi*]

- ix. An order directing the 1<sup>st</sup> defendant to the counterclaim to pay to the counterclaimant the sum of N2,000,000,000.00 [Two Billion Naira] only, being damages for breach of the contract of sale of the aforementioned 28 hectares of land [subsumed in Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja] between the counterclaimant and the 1<sup>st</sup> defendant to the counterclaim.

In proof of its reliefs in the counter claim, 1<sup>st</sup> defendant called two witnesses: AbdulrafiuTundeBabalola [DW1] and Minni Mac-Barango [DW2]. The DW1 adopted his statement on oath filed on 6/8/2013 and tendered Exhibits C, D, E, F1, F2, G, H, J, K & L. The DW2, the customer service manager of Area 8 Garki branch of First City Monument Bank Plc. [FCMB], gave evidence pursuant to a *subpoena* issued by the Court on 29/1/2013 on the application of Akin AkintanEsq., learned counsel for 1<sup>st</sup> defendant/counter claimant. Minni Mac-Barangotendered Exhibits M, N, O, P& Q.

In its counter claim, the 3<sup>rd</sup> defendant/counter claimant claims these reliefs against the plaintiffs and the 4<sup>th</sup> defendant jointly and severally:

- a. A declaration of this Honourable Court that by virtue of the Power of Attorney dated the 4<sup>th</sup> day of October 2010, the Building Lease Agreement dated the 4<sup>th</sup> day of October 2010 and the Deed of Assignment also dated 4<sup>th</sup> day of October 2010 executed between the 3<sup>rd</sup> defendant/counter claimant and 1<sup>st</sup> plaintiff/defendant to the counterclaim as well as the totality of the conduct of the two parties, there exists a subsisting contract of sale of 20 hectares of land out of the entire parcel of land known as Plot 4, Sabo Gida District Zone D07 Abuja, FCT which confers an equitable interest on 3<sup>rd</sup> defendant/counterclaimant.
- b. A declaration of this Honourable Court that having regards to the subsisting contract of sale of the said 20 hectares of land between the 3<sup>rd</sup> defendant/counterclaimant and the 1<sup>st</sup> plaintiff/defendant to the counterclaim and the 3<sup>rd</sup> defendant's equitable interest in respect of the said land, the 1<sup>st</sup> plaintiff/defendant to the counterclaim is incapable of any valid alienation or transfer of the said 20 hectares of land [subsumed in Plot 4, Sabo Gida District Abuja, FCT] to the 2<sup>nd</sup> plaintiff or any other person whatsoever.
- c. A declaration that the deliberate refusal of the 1<sup>st</sup> plaintiff/defendant to the counterclaim to return the original title document [letter of grant dated 16/2/2010] to the 3<sup>rd</sup> defendant/counter claimant is fraudulent, mischievous and amounts to a unilateral repudiation and or breach of the subsisting contract of sale of the said 20 hectares of land comprised

in Plot 4, Sabo Gida District Abuja between the 3<sup>rd</sup> defendant/counterclaimant and the 1<sup>st</sup> plaintiff/defendant to the counterclaim.

- d. An order of specific performance compelling the 1<sup>st</sup> plaintiff/defendant to the counterclaim to perform their obligation to the 3<sup>rd</sup> defendant/counterclaimant appertaining to the 20 hectares of land in respect of Plot 4, Sabo Gida Abuja as demarcated on the site plan dated 9/3/2010 from the AGIS Survey Accessories – version 1.0.1.1.
- e. An order of this Honourable Court compelling the plaintiffs to surrender the title document over Plot 4, Sabo Gida, Abuja to the 3<sup>rd</sup> defendant/counterclaimant, they, having divested themselves of any right to the 20 hectares of the plot.
- f. An order of perpetual injunction restraining the 1<sup>st</sup> plaintiff/defendant to the counterclaim, its servants, agents, assigns, privies or officers or any other person howsoever described from further interfering with the subsisting contract between the 1<sup>st</sup> plaintiff/defendant to the counterclaim and the 3<sup>rd</sup> defendant/counterclaimant over the 20 hectares of land comprised in Plot 4, Sabo Gida, Abuja.
- g. An order of perpetual injunction restraining the 2<sup>nd</sup> plaintiff/defendant to the counterclaim, its servants, agents, assigns, privies or officers or any other person howsoever described from interfering with the lawful



occupation of the 3<sup>rd</sup> defendant/counterclaimant's 20 hectares of land comprised in Plot 4, Sabo Gida, Abuja.

- h. An order directing/compelling the 4<sup>th</sup> defendant/defendant to the counter claim [whether by himself, his servants, agents, privies, agencies/bodies under his control or any other person howsoever described] to accord forthwith full recognition together with all the requisite incident of ownership to the 3<sup>rd</sup> defendant/counterclaimant over the 20 hectares [200,000m<sup>2</sup>] of Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja as shown in the schedule contained in the Power of Attorney dated 24 [sic]October 2010 delineated by beacon Nos. PB186, PB187, PB188, PB189, PB190, PB191, PB192, PB193, PB194, PB<sup>B</sup>, PB<sup>A</sup> – PB; having paid the full consideration of N100 million to the 1<sup>st</sup> plaintiff/defendant to the counterclaim in respect of same.
- i. An order directing/compelling the 4<sup>th</sup> defendants/defendant to the counter claim [whether by himself, his servants, agents, privies, agencies/bodies under his control or any other person howsoever described] to issue forthwith a new certificate of occupancy in the name of the 3<sup>rd</sup> defendant/counterclaimant in respect of the 20 hectares [200,000m<sup>2</sup>] of Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja as shown in the schedule to the Power of Attorney delineated by beacon Nos. PB186, PB187, PB188, PB189, PB190, PB191, PB192, PB193, PB194, PB<sup>B</sup>, PB<sup>A</sup> – PB; having regards to the full consideration of N100 million

paid by the 3<sup>rd</sup> defendant/counterclaimant to the 1<sup>st</sup> plaintiff/defendant to the counterclaim in respect of the said land.

IN THE ALTERNATIVE TO RELIEFS [a] to [i] above:

- j. An order directing the 1<sup>st</sup> plaintiff/defendant to the counterclaim to pay the 3<sup>rd</sup> defendant/counterclaimant the sum of N1,800,000,000 [One Billion, Eight Hundred Million Naira] only being damages for breach of the contract of sale of the said 20 hectares of land subsumed in Plot 4, Sabo Gida District, Abuja between the 3<sup>rd</sup> defendant/counterclaimant and the 1<sup>st</sup> plaintiff/defendant to the counterclaim.

In proof of its counter claims, the 3<sup>rd</sup> defendant called 2 witnesses: Surveyor AbubakarIdakwo [DW3] and Minni Mac-Barango [DW4]. The DW3 adopted his statement on oath filed on 6/6/2012 and his further statement on oath filed on 8/2/2013. DW3 tendered Exhibits R, S, T, U, V, W & X1-X16. The DW4, the customer service manager of Area 8 Garki branch of FCMB, gave evidence pursuant to a *subpoena* issued by the Court on 16/3/2017 on the application of Michael EdetEsq., learned counsel for the 2<sup>nd</sup>defendant & 3<sup>rd</sup> defendant/counter claimant. The DW4 tendered Exhibits Y1 & Y2.

Barrister Onyilokwu Jude Abojeand ASP Raphael Onwuzuligbo [Rtd.]gave evidence for the defendants to the counter claim. Barrister Aboje[as DCW1] adopted his statement on oath filed on 30/4/2018 and tendered ExhibitsZ, AA, BB1-BB6, CC, DD & EE. When Barrister Aboje was cross examined byMichael EdetEsq., counsel tendered Exhibits FF & GG through him.

As I said before, ASP Raphael Onwuzuligbo testified as PW1 and was cross examined by Akin AkintanEsq. before the plaintiffs' suit was dismissed. In the proceeding of 20/9/2019, O. U. HeavensEsq., Akin AkintanEsq. and Michael EdetEsq. agreed that the evidence of ASP Raphael Onwuzuligbo as PW1 be adopted as his evidence as DCW2; but subject to the right of the other defendants to cross examine him. The DW2 was cross examined by Mr. Edet on 20/11/2019.

**Case of the 1<sup>st</sup> defendant/counter claimant:**

**Evidence of Abdulrafiu Tunde Babalola- DW1:**

The evidence of the DW1 is that he is a director of the 1<sup>st</sup> counter claimant [hereinafter called "Q-H"]. Q-H is the donee of the Irrevocable Power of Attorney donated by the 1<sup>st</sup> defendant to the counter claim [hereinafter referred to as "Justin-J"]. The Power of Attorney dated 28/2/2010 is Exhibit C, which pertains to 28 hectares out of 485752.49m<sup>2</sup> constituting Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja. The valuable consideration for the said Power of Attorney is the sum of N200 million payable in instalments, out of which the sum of N167,500,000. was paid by Q-H to Justin-J leaving a balance of N32,500,000.

As evidence of payment of N167,500,000, the DW1 tendered Exhibits D, E, F1, F2 & G, which are statements of account, deposit slips, and other documents from First Bank Nig. Plc., Zenith Bank Plc. and FCMB. He also

tendered: "*Payment of Land by QH Multi Concepts to Justin J. Global Venture Ltd.*" [Exhibit H]; and *Acknowledgement Receipt of Payment* dated 19/3/2012 signed by Mr. Samuel Chen "*for: Justin-J Global Ventures Ltd.*" [Exhibit J]. After the payment of the full consideration by Q-H, the said Power of Attorney was to be registered by Justin-J and a deed of assignment was to be executed between them. Justin-J [through its officers, privies and agents like Samuel Chen and Sule Abide] collected huge and fragmented sums of money amounting to the sum of N167,500,000. The sums were paid into FCMB, Area 8, Abuja account number 0442060653313001 [now account number 0653313013], which is owned and run by Justin-J.

Upon gaining possession of the Plot, Q-H started preliminary construction work like setting out of the perimeter of the site, clearing, surveying, grading, etc. at huge costs. With the full knowledge, acquiescence and blessing of Justin-J, Q-H has since January, 2011 moved to the said Plot to commence large scale building of its housing estate and has incurred huge costs of about N1.5 billion. Justin-J [through its officers, assigns and agents like Faisal & Saleem Integrated Ltd. and Umar Farouk Mohammed] maintains offices in Abuja that are in close proximity to the Plot and had constructive knowledge of the goings-on on the site. Justin-J acquiesced to the development carried out by Q-H since January 2011 and did nothing to stop it until shortly before the commencement of the suit. DW1 tendered a letter from Faisal & Saleem Integrated Ltd. to Justin-J dated 21/2/2012 [Exhibit K] to show that it transacts business in Area 11, Garki, Abuja.

DW1 further stated that Justin-J may not have an official company secretary, but it has a practice of holding out its officers/agents to execute documents on its behalf as its secretary. He tendered the Power of Attorney donated by Justin-J to Onyilokwu Jude Aboje where one of its agents [Umar Farouk Mohammed] signed as its secretary; the Power of Attorney dated 16/12/2011 is Exhibit L. Justin-J, by its recent conduct, attempted to repudiate the contract it entered into with Q-H with a view to selling 28 hectares being part of Plot 4 Sabo Gida District, Abuja to the 2<sup>nd</sup> defendant to the counter claim hereinafter called "*Kosun*".

When DW1 was cross examined by learned counsel for the defendants to the counter claim [O. U. Heavens Esq.], he said he knew about the land through Samuel Chen, the appointed agent and representative of Justin-J, who brought the original title document to him. He will be surprised to hear that account number 0653313013 in FCMBinto which he paid N167,500,000 does not belong to Justin-J. He was present when the Power of Attorney [Exhibit C] was signed; Samuel Chen signed for the director and the secretary of Justin-J also signed. He conducted a search in Corporate Affairs Commission [CAC] to establish the directors of Justin-J. The person who signed as secretary of Justin-J in the Power of Attorney [Exhibit C] is a director; DW1 said he cannot remember his name.

When DW1 was asked about the original documents presented to him by Samuel Chen, he stated that the documents are not with him. He explained

that after the search in AGIS with the original documents, he had the documents for about 2 weeks. As they were paying the money in tranches, Samuel Chen said the directors asked for the original documents until after the final payment. So, he gave Samuel Chen the original documents. He did not visit the office of Justin-J in the course of the transaction. He did not need to contact the directors of Justin-J because he was dealing with the agent of Justin-J who had the original title documents. He obtained approval to start development on the land. It was in Court that he became aware that Justin-J is questioning the documents he is relying on for the purchase of the land.

**Evidence of Minni Mac-Barango - DW2:**

In her evidence, DW2 said account number 0442060653313001 [now account number 0653313013] in FCMB belongs to Justin-J. The signatory to the account is Samuel Atume Chen. Her bank complied with due diligence in opening the account and subsequent maintenance of the account. The bank collected all the requirements to open a corporate account and they filled KYC form [i.e. know your customer form]. The DW2 tendered the following documents:

- i. Form CAC 7 of Justin-J dated 8/12/2008: Exhibit M.
- ii. Mandate card of the account of Justin-Jin FCMB: Exhibit N.
- iii. SME account opening application form: Exhibit O.
- iv. Know your customer report: Exhibit P.

v. Board resolution of Justin-J dated 21/9/2010: Exhibit Q.

During cross examination of DW2 by O. U. Heavens Esq., she stated that she was not the person that opened the said account. Mr. Gboyega Fatimilehin and Mr. Akindele Akintoye, the directors of Justin-J signed the Board resolution [Exhibit Q]. The directors of Justin-J authorized the bank to open an account for Samuel Chen to run as the sole signatory. She would not know if Mr. Samuel Chen was a fraudster. It is a requirement for the opening of a corporate account for an authorized officer of the bank to visit the corporate body before opening the account. The bank visited Justin-J; know your customer report [Exhibit P] is proof that the bank visited. The bank does not confirm board resolutions from CAC; the bank confirms board resolutions by checking the names and signatures of the directors in Form CAC7 and the names and signatures on the board resolution.

When DW2 was re-examined, she stated that what she meant in her evidence that the bank visited Justin-J is that the bank went to its address. It is not compulsory for the bank staff to see the person.

**Case of the 3<sup>rd</sup> defendant/counter claimant:**

**Evidence of Surveyor Abubakar Idakwo - DW3:**

The evidence of the DW3 in his statement on oath filed on 6/6/2012 is that he is the managing director of the 3<sup>rd</sup> counter claimant [hereinafter called

*"Newland"*]. Justin-J granted 20 hectares out of 48.58 hectares of Plot 4 Sabo Gida, Abuja to Newland for the sum of N100 million. Upon payment, they were given the original letter of grant by Justin-J which enabled them to move to site. They constructed a bridge to gain access to the plot. In paragraphs 13-16 of his statement on oath, DW3 stated the expenses incurred on the plot before they started construction works, including payment of compensation for crops and economic trees. The agent of Justin-J, Mr. Samuel Chen, came to his office to collect the original document of title, giving the impression that Justin-J got an interested developer for the remaining portion of the land and they needed to show the developer the original document to enable him conduct search at AGIS. Newland believed them and obliged them the document which they never returned.

Surveyor Idakwo further testified that Justin-J was fraudulent to have withheld the original document of title over the said Plot 4 from Newland. The 4<sup>th</sup> defendant through the Development Control Department of FCDA was aware of the presence of the 2<sup>nd</sup> & 3<sup>rd</sup> defendants on site and was monitoring development on the plot to ensure conformity with Abuja Master Plan and the site development plan. Newland advertised and got subscribers for the houses on the plot.

In his further statement on oath filed on 8/2/2013, DW3 stated that Justin-J acting through its duly authorized agent [Mr. Samuel Chen] offered the entire Plot 4 to Newland about September 2010 for sale for the sum of N300



million for the development of mass housing estate. Newland did not have N300 million; it paid N100 million as consideration for 20 hectares of the said Plot 4. Newland paid Justin-J the sum of N99,500,000 by E-payment through Barrister Alero M. E. of Walcot Properties Ltd. into Justin-J's FCMB account No. 0442060653313001 by letter dated 24/9/2010. It also paid N500,000 to Justin-J by cash through its representative, Mr. Samuel Chen. He explained that Mr. Samuel Chen came to his office to collect the original document of title about December 2011.

DW3 tendered the following documents in evidence:

- i. Irrevocable Power of Attorney dated 4/10/2010 donated by Justin-J to Newland: Exhibit R.
- ii. Deed of Assignment dated 4/10/2010 between Justin-J and Newland: Exhibit S.
- iii. Building Lease Agreement dated 4/10/2010 between Justin-J and Newland: Exhibit T.
- iv. Form CAC 7 of Justin-J dated 8/12/2008 and the attached documents: Exhibit U.
- v. Ordinary resolution of Justin-J dated 23/9/2010: Exhibit V.
- vi. Compensation agreement between Newland and Chief Sanya Easy Sakka dated 14/12/2011: Exhibit W.

- vii. 15 Receipts: Exhibits X1-X15; and the receipt from Nigerian Postal Service: Exhibit X16.

During cross examination of DW3 by O. U. Heavens Esq., he stated that from Exhibit M [Form CAC 7 of Justin-J], its directors are Okeafor Justin Anayo, Okeafor Joyce, Akintoye Akindele and Fatimilehin Gboyega. He does not know any of them. He will be surprised to hear that the FCMB account of Justin-J was solely operated by Samuel Chen. He did not have any document evidencing the collection of the title documents of the said Plot 4 by Samuel Chen. He will be surprised to hear that Samuel Chen is a fraudster because the defendants to the counter claim have not proved it.

**Evidence of Minni Mac-Barango - DW4:**

The testimony of Minni Mac-Barango as DW4 is similar to her evidence as DW2 in respect of the account of Justin-J in FCMB, which has Samuel Chen as the sole signatory. She adopted Exhibits M, N, O, P & Q. DW4 tendered the statement of account of Justin-J in FCMB from September 2010 to September 2012 as Exhibit Y; and the Certificate of Identification she signed on 6/7/2017 as Exhibit Y1. From Exhibit Y, there was a transfer of N99,500,000 into that account on 29/9/2010 from one Walcot.

When DW4 was cross examined by Akin Akintan Esq., she stated that from Exhibit Y, there was deposit of the sum of N1,500,000 by Tunde Babalola on 6/1/2011. There were also deposits of N10,000,000, N25,000,000,

N2,000,000 and N3,000,000 by Q-H respectively on 1/2/2012, 9/3/2012, 22/5/2012 and 2/8/2012 into the said account.

During cross examination of DW4 by Mr. Heavens, she said throughout the period reported in Exhibit Y, Samuel Chen was the sole signatory but he was not the only one that operated the account. This is because he issued cheques to other people and people deposited cheques and paid monies to the account. The bank did not need the passport photographs of the directors to open the account. The signatures of the directors of Justin-J in Form CAC 7 [Exhibit M] are not the same as their signatures in the account opening package [Exhibit O]. The directors of Justin-J had given authority to Samuel Chen to run the account; so, on the account opening form, only Samuel Chen signed. DW4 later stated that the directors of Justin-J did not sign Exhibit O. They only wrote their names; there is no space for their signatures. The signatures of the directors in Exhibits M and Q are the same.

**Case of the defendants to the counter claim:**

**Evidence of Barrister Onyilokwu Jude Aboje- DCW1:**

His testimony is that he is the legal representative of Kosun. Justin-J was allocated Plot 4, Sabo Gida District, Abuja. Justin-J and Kosun entered into a sale transaction over the said Plot 4 for the agreed purchase price of N400 million. Justin-J was paid part of the agreed purchase price through one of its directors and also through its agent [Faisal & Saleem Integrated Ltd.]. The

original copy of the allocation letter of Plot 4 was handed over by Justin-J to Kosun through him. On or about 4/4/2012, he and the chief executive officers of Kosun visited Plot 4 and found that Q-H, Newland and 2<sup>nd</sup> defendant [Unyogba Block Moulding & Sales Ltd.] have trespassed into the said Plot.

The 2<sup>nd</sup> defendant was carrying out block moulding activities. Q-H and Newland were building structures on the Plot. The said Plot 4 was divided into small parcels of land and marketed to members of the public. When Kosun notified Justin-J of its discovery, the latter informed the former that the trespass on the land was without its authorization or agreement. Justin-J wrote letters of complaint to the Development Control Department of the 4<sup>th</sup> defendant. Barrister Aboje further stated that on 30/4/2018, he was informed by Mr. Gboyega Fatimilehin [a director of Justin-J] that: [i] Justin-J does not know Q-H and did not enter into any agreement with it in respect of the said Plot 4; [ii] it does not know any of the defendants; [iii] it did not subdivide the Plot and never sold same to Q-H and Newland; and [iv] he does not know Samuel Chen.

DCW1 tendered the following documents:

- i. Certificate of Incorporation of Kosun dated 20/10/2008: Exhibit Z.
- ii. Power of Attorney donated by Justin-J to Barrister Aboje [DCW1]: Exhibit AA.

- iii. 6 cheques in favour of Faisal &Saleem Integrated Ltd. all dated 23/12/2011 for N10 million each:Exhibits BB1-BB6 respectively.
- iv. Deposit slip for N10 million: Exhibit CC.
- v. Acknowledgement of receipt of N170 million by Mohammad Umar Farouk: Exhibit DD.
- vi. Letter from Faisal &Saleem Integrated Ltd. dated 21/2/2012 addressed to CEO/managing director of Justin-J: Exhibit EE.

When DCW1 was cross examined by Akin AkintanEsq., he said he started dealing with Justin-J in 2012. Before 2012, he had no knowledge of the transactions by Justin-J. He is aware of the complaint by Justin-J to EFCC against the banks through which Q-H and Newland alleged that they paid money to it [Justin-J]. After the N170 million paid for the Plot, he paid additional N10 million; that was after going to the Plot.

During cross examination of Barrister Aboje by Michael EdetEsq., he testified that in Exhibit AA, Umar Farouk Mohammad signed as secretary of Justin-J. It will not surprise him to know that Umar Farouk Mohammad was not the company secretary or a director of Justin-J. Mr.Edet tendered Form CAC 2.1 [i.e. particulars of person who is secretary of a company] and Form CAC 10 [i.e. annual return] of Justin-J as Exhibits FF & GG respectively.

*Evidence of ASP Raphael Onwuzuligbo [Rtd.] - DCW2:*

The evidence of DCW2 in his statement on oath filed on 16/8/2013 is that he is a forensic document examiner attached to the Forensic Science Laboratory, Force CID Annex, Alagbon Close, Ikoyi, Lagos. He was trained on how to examine and compare documents and their scientific identifications for 2 years at the Force CID Annex, Kaduna from 1/1/1990 to 31/12/1991. After his training, he has been analysing documents and also testified in various law courts in and outside Nigeria. He received additional training in analysis of documents. With his training/experience, he can tell the difference between a genuine signature and an imitated signature through scientific examination and comparison of the signatures.

DCW2 further testified that on 3/6/2012, he received a letter from Jackson Kargbo & Associates with some documents attached; the said letter dated 23/5/2013 is Exhibit A. The attached documents are: [i] Power of Attorney donated by Justin-J to Q-H dated 28/2/2010; [ii] Building Lease Agreement donated by Justin-J to Newland dated 4/10/2010; [iii] the Deed of Assignment between Justin-J and Newland dated 4/10/2010; [iv] the Power of Attorney donated by Justin-J to Newland dated 4/10/2010; and [v] Form CAC7 No. 434849 dated 8/12/2008. The letter requested for the examination and comparison of the signatures in the relevant columns of the said documents and to determine whether they are the same with those in the incorporation documents of Justin-J.

ASP Raphael Onwuzuligbo further stated that when he carried out the scientific examination and comparison on the signatures with the aid of video spectral comparator [VSC-5000] and other distinguishing apparatus, he found inherent features of disparity between signatures in the relevant columns of the documents listed as [i]-[iv] above. He also found that the signatures in the documents or agreements listed as [i]-[iv] are imitations of the signatures in the incorporation form of Justin-J listed as [v] above. He tendered the result of document examination dated 25/6/2013 and the Comparative Table as Exhibits B & B1 respectively.

When DCW2 was cross examined by Mr.Akin Akintan, he stated that the signature of a man can only change pictorially with time and age devoid of the master pattern. Master pattern means those strokes and letters that form the individual's handwriting or signature. As a person is advancing in age, he could deviate from the pictorial appearance which may be as a result of the person's position, for example sitting or lying in bed. In all these, the master pattern remains unchanged. The texture of a paper can only affect the signature pictorially but not the master pattern.

During cross examination of DCW2 by Mr. Michael Edet, he stated that as a human being, he can make mistakes but he did not make any mistake in his examination and findings in this case. The documents he relied upon to carry out his examination were photocopies; but they were legible and suitable for comparison. He retired from the Police Force on 1/4/2015.

*Issues for determination:*

The final address of the defendants to the counter claim [i.e. Justin-J and Kosun] was filed on 31/1/2020 by O. U. Heavens Esq. The final address of the 1<sup>st</sup> counter claimant [i.e. Q-H] was filed on 9/6/2020 by Akin Akintan Esq. The final address of the 3<sup>rd</sup> counter claimant [i.e. Newland] was filed on 2/3/2020 by Michael Edet Esq. The final addresses were adopted on 10/6/2020.

In the final address of the defendants to the counter claims, O. U. Heavens Esq. formulated these four issues for determination:

1. Whether in the absence of Samuel Chen, this Honourable Court can resolve the issue of purchase of Plot 4, Sabon Gida District, Abuja as raised by the counter claimants.
2. Whether by the totality of the evidence placed before this Honourable Court, the 1<sup>st</sup> and 2<sup>nd</sup> counter claimants have proved their case by preponderance of evidence so as to be entitled to the reliefs sought in the counter claim.
3. Whether an irrevocable power of attorney without any consideration can confer title to land on donees who furnished no consideration and whether by the circumstances of this case, specific performance can be decreed.
4. Whether the counter claimants can sustain a counter claim against a co-defendant in a suit as has been done in this suit.



Akin AkintanEsq. posed two issues for determination in the final address of the 1<sup>st</sup> counter claimant. These are:

1. Having regard to the totality of the evidence before the Honourable Court, whether the 1<sup>st</sup> counter claimant has sufficiently established its case against the defendants to the counter claim.
2. Whether the defendants to the counter claim have adduced sufficient credible evidence to warrant a rebuttal of the 1<sup>st</sup> counter claimant's case.

In the final address of the 3<sup>rd</sup> counter claimant, Michael EdetEsq. distilled the following three issues for resolution:

1. Whether the defendants to the counter claim have been able to establish the allegation of forgery against the 3<sup>rd</sup> counter claimant's claim of title in this case.
2. Whether from the totality of the evidence before the Court, the 3<sup>rd</sup> counter claimant has been able to establish equitable title in respect of 20 hectares of Plot 4 Sabo Gida District, Abuja, the land in dispute.
3. If Issue 1 is answered in the negative and Issue 2 is resolved in the affirmative, whether this Honourable Court should not grant all the reliefs prayed for by the 3<sup>rd</sup> counter claimant before this Court.

In my considered opinion, the determination of the counter claims of Q-H and Newland turns upon the following six issues:

1. Whether Q-H and Newland established that Samuel Chen acted as the agent or representative of Justin-J in respect of Plot 4 Sabo Gida District, Abuja.
2. Whether Q-H proved that it paid N167,500,000.00 to Justin-J as part of the purchase price of N200,000,000.00 for 28 hectares of Plot 4 Sabo Gida District, Abuja.
3. Whether Newland proved that it paid N100,000,000.00 to Justin-J as the purchase price for 20 hectares of Plot 4 Sabo Gida District, Abuja.
4. Whether Q-H and Newland have acquired any interest, right or title in and over Plot 4 Sabo Gida District, Abuja.
5. Are the counter claims of Q-H and Newland against the 4<sup>th</sup> defendant [Hon. Minister of the Federal Capital Territory] incompetent?
6. Are Q-H and Newland entitled to their respective reliefs in their counter claims?

## **ISSUE 1**

*Whether Q-H and Newland established that Samuel Chen acted as the agent or representative of Justin-J in respect of Plot 4 Sabo Gida District, Abuja, the subject matter of this action.*

Let me first state the position of the law on burden of proof in civil cases. Section 131[1] of the Evidence Act, 2011 provides that whoever desires any

court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Section 133[1] & [2] thereof read:

- 1) *In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.*
- 2) *If the party referred to in subsection [1] of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.*

From the above provisions, the burden of proof in civil cases is not static; it shifts from one party to the other depending on the state of the pleadings. In **Olaiya v. Olaiya [2002] 8 NWLR [Pt. 782] 652**, it was held that the burden of proof may shift depending on how the scale of evidence preponderates. See also the cases of **Ebong v. Ikpe [2002] 17 NWLR [Pt. 797] 504** and **A.G., Lagos State v. Purification Tech. [Nig.] Ltd. [2003] 16 NWLR [Pt. 845] 1.**

The case of the counter claimants [Q-H and Newland] is that Samuel Chen acted as agent or representative of Justin-J in respect of its Plot 4

SaboGidaDistrict, Abuja. Thus, the counter claimants have the evidential burden to prove their assertion. In addition, some of the reliefs of the counter claimants are declaratory. It is settled law that the counter claimants have the burden to adduce credible evidence in support of their claims; and they must succeed on the strength of their case.

The DW1 & DW3 gave oral evidence in proof of this assertion. In addition, DW3 tendered the Board resolution of Justin-J dated 23/9/2010 [Exhibit V] in proof of the fact that Samuel Chen acted as its agent or representative. DW3 tendered Form CAC 7 [particulars of directors] of Justin-J as Exhibit U, which contains the signatures of its directors. The Board resolution, Exhibit V, which was signed by two directors of Justin-J, reads:

*At the Extra Ordinary General Meeting of the Board of Directors of JUSTIN-J GLOBAL VENTURES LIMITED duly convened and held on the 23<sup>rd</sup> Day of September 2010, the following resolutions were proposed and duly passed and it was resolved thus;*

- 1. That the delineated portion of 200000.00m<sup>2</sup> of the mass Housing allocation issued to the company by the Federal Capital Territory Administration for mass housing development programme be assigned to NEULAND HABITAT LIMITED upon full payment of the agreed sum with the company's representative [MR SAMUEL CHEN].*

2. *That the portion of the land measuring 200000.00m<sup>2</sup> be transferred to NEWLAND HABITAT LIMITED to hold forthwith for the unexpired residue as agreed by the company.*

The DW2 [who also testified as DW4] tendered a Board resolution of Justin-J dated 21/10/2010 [Exhibit Q]. The evidence of Minni Mac-Barango [DW2] is that based on the said Board resolution, FCMB opened account number 0442060653313001 [new number 0653313013] for Justin-J and the signatory to the account is Samuel Chen. She stated under cross examination that the bank confirmed from Form CAC 7 [particulars of directors] of Justin-J [Exhibit M] that the signatures of Mr. Gboyega Fatimilehin and Mr. Akindele Akintoye, who signed the Board resolution, are the same with their signatures on the said Form CAC 7. The Board resolution reads:

*At the general board meeting of JUSTIN – J GLOBAL VENTURES LTD held on the 21<sup>st</sup> of September, 2010 at our Abuja office, House A10, Dove Court, 5. J. J. Oluleye St. Utako Abuja, the following decision was taken:*

*That a current account should be opened with the name of the company at FCMB PLC. Ogbomosho Branch, Abuja.*

*Also, at the meeting, it was resolved that Mr. Samuel Atume Chen who signs thus ..... [signed] and whose passport photograph appears above should be the sole signatory to the account.*

I am of the respectful view that by the said Board resolutions, Exhibits Q&V, the counter claimants have adduced evidence *“which ought reasonably to satisfy the Court”* that the fact sought to be proved has been established i.e. the fact that Samuel Chen acted as the agent or representative of Justin-J. Thus, by virtue of section 133[2] of the Evidence Act, the burden has shifted to Justin-J to adduce evidence to disprove the above fact. Did Justin-J adduce any evidence to challenge, controvert or disprove the fact established by Exhibits Q & V?

In paragraph 3[a] of the pleading of the defendants to the counter claims filed on 30/4/2018, they averred in part that the 1<sup>st</sup> plaintiff *“shall rely on Forensic Expert Reports carried out by a Forensic Signature Expert to prove to the Court that the 1<sup>st</sup> Plaintiff and her alter egos and directing minds or agents did not make all the documents relied upon by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants ...”* In paragraph 3[b], the 1<sup>st</sup> plaintiff further averred that *“she does not know the person called Samuel Chen ... her shareholders, directors or at all do not know any such person and never at any time, whatsoever, authorize the named Samuel Chen to dispose her holding in Plot 4, Sabo Gida District, Abuja.”* In paragraphs 5[b] & 6[b] thereof, it is averred that the 1<sup>st</sup> plaintiff does not have any account with FCMB specifically account number 0442060653313001.

As correctly stated by Mr. Akin Akintan and Mr. Michael Edet, none of the directors or officers of Justin-J especially Mr. Gboyega Fatimilehin and Mr. Akindele Akintoye, whose signatures appear on Exhibits Q & V, testified

to deny or discredit the Board resolutions or to establish the facts averred in paragraphs 3[a], 3[b] 5[b] & 6[b] above. There is no evidence by any director or officer of Justin-J. to support the averment that it does not know Samuel Chen; or that Samuel Chen did not act as its representative or agent in respect of the said Plot 4; or that it did not authorize the opening of account number 0442060653313001 [new number 0653313013] in FCMB.

The evidence of ASP Raphael Onwuzuligbo [DCW2] did not touch Exhibits Q & V or the averment that Justin-J and its directors or shareholders do not know Samuel Chen. In his effort to prove the above averments, Barrister Aboje [DCW1] stated in paragraph 10 of his statement on oath in part:

*"I was informed by Mr. Gboyega Fatimilehin on the 30<sup>th</sup> day of April 2018 at about 4pm in my Chambers and I verily believe him ... That the 1<sup>st</sup> Defendant never, at anytime whatsoever, subdivide the subject plot and sold same to the counter claimants as put forth by them. The 1<sup>st</sup> Defendant does not have an account with the Bank[s] claimed by the Counter-claimants and does not know the person called Sam Chen."*

I agree with Mr. Akintan and Mr. Edet that the above evidence of Barrister Aboje is hearsay evidence, which is inadmissible and cannot be relied upon by the Court. See **Jolayemi v. Alaoye [2004] 12 NWLR [Pt. 887] 322.**

It is worthy of note that proof of a claim for declaration of title to land, like every civil claim, is on the balance of probabilities or preponderance of

evidence. See the case of Onwuama v. Ezeokoli [2002] 5 NWLR [Pt. 760] 353. Thus, where a defendant [like the defendants to the counter claim in this case] offers no evidence in support of his pleadings, the evidence before the trial court obviously goes one way with no other evidence weighing against it. In such situation, there is nothing to put on the other side of the proverbial or imaginary scale of balance as against the plaintiff's evidence. The onus of proof in such a case is discharged on minimal proof. See Admin./Exec., Estate of Abacha v. Eke-Spiff [2009] 7 NWLR [Pt. 1139] 97.

In the light of the foregoing, the Court holds that Justin-J did not adduce any evidence to challenge, controvert or disprove the fact that Samuel Chen acted as its agent or representative as shown in Exhibits Q & V and the testimonies of the witnesses of the counter claimants.

O. U. Heavens Esq. argued under his Issue No. 1 that Samuel Chen was not called by any of the counter claimants to give evidence and he was not joined as a party. The counter claimants did not bring Samuel Chen as a witness to give first-hand testimony of his dealings and to be cross examined. It was submitted that the issues in controversy cannot be adequately determined in the absence of the testimony of Samuel Chen. The failure to call Samuel Chen as a witness is fatal to the case of the counter claimants. He relied on the provision of section 167[d] of the Evidence Act to the effect that evidence which could be produced but was not produced would, if produced, be unfavourable to the person who withholds it.



Learned counsel for the defendants to the counter claims further argued that by failing to bring Samuel Chen, the evidence adduced by the counter claimants is "*scanty and ineffectual*". There exists a "*lamentable vacuum*" in the evidence they adduced, which only the testimony of Samuel Chen can fill. He submitted that it is fatal for a party to call minimal and ineffectual evidence and keep out the major evidence needed by the court to do justice. He cited the case of **A.B.U. Zaria v. Molokwu [2004] 2 WRN 106.**

In response to the above submission, Mr. Michael Edet argued that Samuel Chen could not have been joined to the suit because his role in the transaction was that of an agent of a disclosed principal i.e. Justin-J. He referred to the case of **Amadiume v. Ibok [2006] NWLR [Pt. 975] 158** to support the legal principle that where the principal of an agent is known or disclosed, the principal is the proper party to sue or be sued for anything done or omitted to be done by the agent.

My humble opinion is that the submission of Mr. Heavens that the counter claimants did not call Samuel Chen as a witness would have been tenable or potent if any of the directors or officers of Justin-J had given evidence to deny, rebut or challenge the facts established vide Exhibits Q & V as aforesaid. In that case, the burden of proof would have shifted back to the counter claimants by virtue of section 133[2] of the Evidence Act; and failure to call Samuel Chen as a witness would have been fatal to their case.

From the facts established by Exhibits Q & V, Mr. Akintan submitted that by the doctrine of agency by estoppel, Justin-J is precluded from denying the implied agency of Samuel Chen. He relied on section 169 of the Evidence Act; and the cases of Leventis Tech. Ltd. v. PetrojessicaEnt. Ltd. [1996] 6 NWLR [Pt. 605] 45 and U.T.C. [Nig.] Plc. v. Philips [2012] 6 NWLR [Pt. 1295] 136. Similarly, Mr. Edet relied on the principle of agency by estoppel and cited the case of U.T.C. [Nig.] Plc. v. Philips [supra]. He submitted that there are links that connect Justin-J to Samuel Chen which would warrant the Court to estop it from denying Samuel Chen as its agent.

In U.T.C. [Nig.] Plc. v. Philips [supra] @ pages 162-163, F-A, His Lordship, Mary U. Peter-Odili, JCA [now JSC] held:

*“Agency by estoppel arises where one person either holds another out as being his agent or allows another to hold himself out as his agent even though no such agency exists in fact, that other person will be precluded from denying the existence of the agent’s authority to act on his behalf. ... Fridman, the Law of Agency [6<sup>th</sup>ed] at p.61 has lucidly stated the legal principle [as] it related to agency by estoppel as follows:*

*“Applied to agency [i.e. estoppel] this means that a person who by words or conduct has allowed another to appear to the outside world to be his agent, with the result that third parties deal with him as his agent, cannot afterwards repudiate this apparent agency if to do so would cause*

*injury to third parties; he is treated as being in the same position as if he had in fact authorized the agent to act in the way he has done.”...”*

Since, as I have said, Justin-J did not deny, rebut or challenge Exhibits Q & V, I agree with both learned counsel for the counter claimants that the doctrine of agency by estoppel applies to this case and Justin-J is precluded from denying the existence of the authority of Samuel Chen to act on its behalf in respect of Plot 4, Sabo Gida District, Abuja.

From all that I have said, I resolve Issue No. 1 in favour of the counter claimants. I hold that Q-H and Newland established that Samuel Chen acted as the agent or representative of Justin-J in respect of the said Plot 4 Sabo Gida District, Abuja.

### **ISSUES 2 & 3**

*Whether Q-H proved that it paid N167,500,000.00 to Justin-J as part of the purchase price of N200,000,000.00 for 28 hectares of Plot 4 Sabo Gida District, Abuja.*

*Whether Newland proved that it paid N100,000,000.00 to Justin-J as the purchase price for 20 hectares of Plot 4 Sabo Gida District, Abuja.*

The evidence of DW1 is that Q-H paid a total of N167,500,000.00 to Justin-J through its agent, Samuel Chen, being part of the agreed purchase price of N200 million for 28 hectares of the said Plot 4. The DW1 tendered documents

to prove payment of the said sum including Exhibit J, which is the acknowledgement of receipt of payment of N167,500,000.00 dated 19/3/2012 issued by Samuel Chen for or on behalf of Justin-J. Exhibit H shows the sums paid from 6/1/2011 to 9/3/2012, amounting to N167,500,000.00.

DW3 testified that Newland paid N100 million to Justin-J as the agreed purchase price for 20 hectares of the said Plot 4. He stated that Barrister Alero M. E. of Walcot Properties Ltd. paid N99,500,000.00 on behalf of Newland into the account of Justin-J in FCMB and cash of N500,000 was paid to Justin-J through its agent, Samuel Chen. As DW4 confirmed, the statement of account of Justin-J in FCMB [Exhibit Y] shows that Walcot paid the said sum of N99,500,000 to the said account on 29/9/2010.

In the light of the decisions of the Court on Issue No. 1 that the counter claimants proved that Samuel Chen acted as the agent or representative of Justin-J in respect of the said Plot 4 and that its directors authorized the opening of its account number 0653313013 in FCMB, I resolve Issues 2 & 3 in favour of the counter claimants. I hold that Q-H has proved that it paid N167,500,000.00 to Justin-J as part of the purchase price of N200 million for 28 hectares of the said Plot 4 leaving a balance of N32,500,000.00. I also hold that Newland has proved that it paid N100 million to Justin-J as the purchase price for 20 hectares of the said Plot 4.

## ISSUE 4

*Whether Q-H and Newland have acquired any interest, right or title in and over Plot 4 Sabo Gida District, Abuja.*

Q-H[throughDW1]tendered the Irrevocable Power of Attorney donated to it by Justin-Jon 28/2/2010[Exhibit C] to prove its interest, right or title over 28 hectares of Plot 4, which is described in the Schedule thereto.The DW1 also tendered Exhibit J, which is acknowledgement of receipt of payment of N167,500,000. Exhibit J, signed by Samuel Chen “for: Justin-J Global Ventures Ltd.” addressed to the managing director of Q-Hreads:

### ACKNOWLEDGEMENT RECEIPT OF PAYMENT

*I hereby acknowledged the receipt of the sum of N167,500,000.00 [...] on behalf of Justin-J Global Ventures Limited being part payment for a portion of Land measuring 28hectares out of the total of 48.57 hectares at plot 4 Cadastral Zone D07 of Sabon-Gida District of Abuja. Balancing N32,500,000 [...] only.*

For its part, Newland[through DW3] tendered Irrevocable Power of Attorney dated 4/10/2010 donated to it by Justin-J [Exhibit R], Deed of Assignment and Building Lease Agreement both dated 4/10/2010 [Exhibits S & T respectively] between Justin-J and Newland. Exhibits R, S & T were tendered to prove its title, right or interest in and over 20 hectares of the said Plot 4. The said area of 20 hectares was described in the Schedule to the Irrevocable Power of Attorney and in the Schedule to the Deed of Assignment.

From the averments in paragraphs 3[a] & 6[d] of the amended pleading of the defendants to the counter claims filed on 30/4/2018, their case is that Exhibits C, R, S & T are forged documents.

Learned counsel for defendants to the counter claims argued that the counter claimants have failed to produce credible or reliable documentary evidence and/or acceptable title documents to discharge the burden of proving that they are entitled to their declaratory and injunctive reliefs in respect of Plot 4. The documents relied upon by the counter claimants are forged documents, which cannot confer any form of title on any of them. It was submitted that where signature or handwriting is disputed or said to have been forged, it must be proved to the satisfaction of the Court that the signature or the handwriting was actually made by the person to whom it is credited and that same was regular, authentic and not forged. He referred to section 93[1] of the Evidence Act.

It was further contended by Mr. O. U. Heavens that the counter claimants have alleged that the directors of Justin-J signed Exhibits C, R, S&T. Thus, the burden of proving this assertion squarely rests on them. He cited the case of **Fatuade v. Onwoamanam [1990] NNSC [vol. 21] [Pt. 1] 442** in support of his view that a person who alleges that a document was executed by another is under obligation to prove such execution by that other person. He then submitted that the counter claimants failed to prove their assertion.

Mr. O. U. Heavens further contended that in this case, scientific and technical information are needed to guide the Court in determining the authenticity of the signatures on Exhibits C, R, S & T alleged to have been forged. This is a proper case where an expert witness is needed to assist the Court in arriving at the justice of the case. He referred to **Egesimba v. Onwuzuruike [2002] FWLR [Pt. 128] 1386**. He stated that the evidence of DCW2, which was not shaken or discredited under cross examination, is worthy of consideration in determining the authenticity of the relevant signatures on the documents she examined.

Mr. Akintan argued on behalf of Q-H that primary evidence of rebuttal could only have been given by the directors of Justin-J who signed the Power of Attorney [Exhibit C] through which the sale transaction was consummated. According to learned counsel, the evidence of DCW2 is unreliable because the documents that he worked on were mere photocopies. He relied on the case of **Mudasiru v. Abdullahi [2011] 7 NWLR [Pt. 1247] 591**.

Mr. Akintan submitted further that a witness whose exclusive evidence is germane to the determination of a case must be called to testify; otherwise, the court must invoke the provision of section 167[d] of the Evidence Act against the party withholding his evidence. He referred to the case of **Agbi v. Ogbeh [2006] 11 NWLR [Pt. 990] 65**; and urged the Court to invoke the provision of section 167[d] of the Evidence Act against Justin-J since none of the directors who signed Exhibit C gave evidence.

Learned counsel for Newland referred to section 135[1] of the Evidence Act which provides that: *“If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.”* It was argued that the burden to prove that the documents of title tendered by Newland are forged rests on the defendants to the counter claims. The case of **Omezeghian v. Adjarho [2006] 4 NWLR [Pt. 969] 33** was cited in support. The failure of Justin-Jto testify through any of its officials or directors to debunk the claim of title by Newland and the documents tendered by DW3 & DW4 destroys the allegation of forgery. Mr. Edet relied on **Audu v. Guta [2004] 4 NWLR [Pt. 864] 463** to support the view that only defendants to the counter claims can adduce the evidence required to prove the allegation of forgery they made.

Mr. Edet further stated that the author of the request for forensic examination of the documents [Sam Kargbo Esq. of Jackson Kargbo & Associates] was the former counsel for the defendants to the counter claims. The documents that DCW2 used for his examination were photocopies and he did not see the original. He relied on **Mudasiru v. Abdullahi [supra]** to support the view that a court must be careful in relying on the opinion of a handwriting expert which is not substantially corroborated. Learned counsel also stated that the letter from Sam Kargbo requesting for forensic examination was delivered to the DCW2 while this case was *sub-judice* and without the knowledge of the counter claimants. He posited that this fact puts a question mark on the procedure adopted to obtain the evidence of DCW2.



As I said before, the case of the defendants to the counter claims is that the signature of Mr. Fatimilehin Gboyega was “mimicked” on Exhibit C as the secretary of Justin-J; while the signature of Akintoye Akindele on Exhibit C “is clearly irregular”. It is also the case of the defendants to the counter claims that the signature in the column of Justin-J in Exhibits R, S & T relied upon by Newland, which is said to be the signature of Akindele Akintoye, is not his signature.

At this juncture, the critical question to be resolved is whether the counter claimants have the burden to prove that the signatures on Exhibit C are the signatures of Mr. Fatimilehin Gboyega and Akintoye Akindele; and that the signature on Exhibits R, S & T is the signature of Akintoye Akindele OR whether the defendants to the counter claims have the burden to prove that the signatures on Exhibits C, R, S & T are forged.

As I did say, the standpoint of Mr. Heavens is that the counter claimants have the burden to prove that the said directors of Justin-J signed Exhibits C, R, S & T. On the other hand, Mr. Akintan and Mr. Edethold the view that the burden to prove that the said documents are forged rests on the defendants to the counter claims. In **Aderounmu & Anor. v. Olowu [2000] LPELR-141 [SC] @ 12, B-E**, His Lordship, Ayoola, JSC restated the position of the law thus:

*“The case of Jules v. Ajani [1980] NSCC 222 has clearly established, quite a while ago now, that where in a claim for declaration of title to land the defendant alleges that the document relied on by the plaintiff for the title he*

*seeks is a forgery, the burden is on the defendant who so alleges to prove that fact. Notwithstanding the general onus which rests on the plaintiff to prove his entitlement to the declaration he claims, the evidential burden of proving certain facts occasionally shifts to the defendant. Such is the burden of proving the allegation that the document which the plaintiff relies on is a forgery."*

Also, in the case of **Okeke & Anor. v. Eze [2013] LPELR-22455 [CA]**, the case of the respondent [who was the plaintiff at the trial court] was that he bought 4 plots of the land in issue from Alahun Osunba family in 1976. The appellants' case was that the 1<sup>st</sup> defendant as the head of Alahun family with other accredited representatives of the family sold 2 plots of the land to Mr. Ebong Ebong who subsequently sold the land to the 1<sup>st</sup> appellant in 1992. When the respondent started claiming ownership, the 1<sup>st</sup> defendant informed him that Exhibits ME2 & ME3 are not genuine as the signature on the conveyance was fraudulently procured and the said family did not issue the survey plan. One of the issues before the Court of Appeal was on the burden of proof. *His Lordship, Amina Augie, JCA [now JSC] held at pages 35-36:*

*"The Appellants contend that since the 1<sup>st</sup> Defendant denied issuing or signing the Exhibits ME2 and ME3, the burden shifted to the Respondent to prove that the said Exhibits are not forged. But the Respondent argued that the onus is on the Appellants and referred us to Tewogbade V. Obadina [supra] where Onu, J.S.C. held that - "With regard to the challenge to the validity of Exhibit A - - his challenge being that the document was forged, forgery being a criminal*

*offence, the Appellant indeed has a burden of proving his case beyond reasonable doubt. The law is clear and this Court has stated times without number that where forgery of a document is alleged, there is no initial burden on the Plaintiff to prove due execution but the primary burden is on the Defendant who alleged forgery to prove the forgery alleged by him". There we have it in addition to the trite law that he who asserts must prove, where forgery of document is in issue, the primary burden is on the Defendant who alleges forgery which is a crime to prove the forgery alleged by him ..."*

The above decisions resolve the issue of burden of proof to the effect that the defendants to the counter claims have the burden to establish that Exhibits C, R, S & T, were forged. There is no initial burden on the counter claimants to prove due execution of the documents.

I have read the case of **Fatuade v. Onwoamanam [supra]; [1990] 2 NWLR [Pt. 132] 322** relied upon by Mr. O. U. Heavens for his submission on this issue of burden of proof. The case of the plaintiff/respondent was that in 1956, a parcel of land was leased to her by the Ojora Chieftaincy Family according to native law and custom. She built a house of 11 rooms on the land. She and her family occupied 2 rooms and the remaining rooms were let to tenants. At the outbreak of the national crisis in 1967, she fled Lagos for the East and left her husband in charge of the house. The husband later joined her in the East. At the end of hostilities, she returned to Lagos and met new tenants in the house who refused to acknowledge her as the owner.

The defendant/appellant's case was that in 1968, he bought the house from the plaintiff's husband called Stephen Nwamara through his brother, Jacob Nwamara pursuant to a power of attorney dated 7/6/67 [Exhibit P.12]. It was his case that the house was the property of the plaintiff's husband. The respondent's husband, who gave his name as Cyprian DuruOwoamanam, testified as PW2 and denied that he made the power of attorney relied upon by the defendant. The trial court entered judgment for the defendant. The Court of Appeal set aside the judgment of the trial court and granted the reliefs of the plaintiff. The Supreme Court dismissed the appellant's appeal.

The Supreme Court held that the trial court ought to have adverted to the fact that PW2 having denied Exhibit P.12, the onus was on appellant to have established due execution of Exhibit P.12. The apex Court referred to section 99 of the old Evidence Act - which is the same as section 93[1] of the Evidence Act, 2011 - relied upon by Mr. Heavens. Clearly, the facts of that case are different from the facts of the case before me. For emphasis, PW2 testified and denied that he executed the power of attorney [Exhibit P.12]; but in this case, FatimilehinGboyega and AkindeleAkintoye did not give evidence to deny that they executed the documents, Exhibits C, R, S& T. Thus, the decision in that case is not applicable to the instant case.

Now, in proof of the allegation of forgery, DCW2 testified that he examined photocopies of Exhibits C, R, S& T and compared the signatures thereon with the signatures of FatimilehinGboyega and AkindeleAkintoye in Form CAC 7

of Justin-J dated 8/12/2008. The examination of the documents was at the request of Sam KargboEsq., who was the former counsel for the defendants to the counter claims. The opinion of the DCW2 in his report [Exhibit B] is that the signatures in the documents *“are not the same with any of the signatures in the relevant columns of ‘CAC 7 no. 434849 dated 8/12/2008.’”*In paragraph 12 of his statement on oath, DCW2 stated that *“the signatures in the documents, agreements ... are imitations of the signatures in the incorporation forms of Justin-J Global Ventures Ltd.”*

In the circumstances of this case, can the Court rely on the evidence of DCW2 alone to hold that the defendants to the counter claims have proved beyond reasonable doubt that Exhibits C, R, S & T were forged as required by section 135[1] of the Evidence Act, 2011?

First of all, the position of the law is that in a case of forgery, it is necessary to invite the person whose signature is alleged to have been forged; failure to invite him/her to accept or deny his/her signature is fatal to the case of the person alleging that the signature is forged. In the case of **Alake v. The State [1992] 11-12 SCNJ 177**, it was alleged that the appellant forged cheques. The Supreme Court held that Ajadi and Lawsweerde were vital and material witnesses in the case; they were the persons whose signatures were alleged to have been forged. Failure to call them to deny or confirm their signature[s] on the cheques was fatal to the prosecution’s case, the evidence of handwriting analyst [the PW6] notwithstanding.

Also, in Ibrahim & Anor. v. Dogara & Ors. [2015] LPELR-40892 [CA], it was held that indeed, in proving forgery of signature and certificate, the person whose signature is alleged to have been forged is an indispensable and vital witness and the case is fatal without his evidence. In this case, Mr. Gboyega Fatimilehin and Mr. Akindele Akintoye, whose signatures on Exhibit C were allegedly forged, did not testify to accept or deny their signatures on the document. Also, Akindele Akintoye, whose signature on Exhibits R, S & T was allegedly forged, did not testify to accept or deny his signature on the documents. From the above authorities, both of them are vital, material and indispensable witnesses; and failure of the defendants to the counter claims to call them to testify is fatal to their case.

Secondly, it is the law that a court must be wary and cautious in giving high probative value to a report [or evidence] of an expert where the report was prepared at the behest of a party to the suit. In Skye Bank v. Perone Nig. Ltd. [2016] LPELR-41443 [CA], it was held that such a report should be "*taken with a pinch of salt.*" In the case of Okafor v. Effiong [2017] LPELR-42699 [CA], it was held that the court is not bound to take an expert's report "*hook, line and sinker, the Court has a discretion in the matter.*" In the present case, the report of the DCW2 was prepared at the request and behest of Sam Kargbo Esq., the former counsel for the defendants to the counter claims.

Thirdly, the request of Sam Kargbo Esq. vide his letter [Exhibit A] for the analysis of the signatures was made during the pendency of this case. The

counter claimants were not aware of the request. Also, as DCW2 admitted, he used photocopies of Exhibits C, R, S & T forwarded to him by Sam Kargbo Esq. to carry out the analysis; he did not see the original of the documents. As rightly submitted by Mr. Akintan and Mr. Edet, the above are factors that affect the credibility and evidential value of the report and evidence of an expert, like the evidence of DCW2. In **Mudasiru v. Abdullahi [supra] @ 616, E-G**, His Lordship, John Inyang Okoro, JCA [now JSC] held:

*“It is improper for the appellants to have hired a hand writing expert and committed to him some documents containing some signatures for analysis behind the back of the respondents ... As was rightly pointed out by the DW4, the witness called by the respondents, such an exercise would need to be done with the original of the documents. Definitely, not photocopies, especially now that we have gone far in electronic and information technology. One should be wary in using photocopies of documents to authenticate signatures on it as same could be superimposed neatly and manipulated before being photocopied.”*

It was also held in the above case that the opinion of a handwriting expert must always be received with great caution and it is unsafe to base a judgment purely on expert opinion without substantial corroboration.

In the instant case, the report or evidence of DCW2 is not corroborated or supported by any other evidence. Therefore, it will be improper and unsafe for the Court to base its decision solely on the opinion of DCW2.

Fourthly, in paragraph 4 of the amended defence to the amended counter claims filed on 30/4/2018, the defendants to the counter claims requested the Court to compare the signatures of the directors of Justin-J in its Form CAC 7 and the ones allegedly signed by the same directors in the documents relied upon by the counter claimants. Similarly, Michael Edet Esq. urged the Court to compare the signatures complained of with the signatures in Form CAC 7 of Justin-J in line with section 101 of the Evidence Act, 2011.

Pursuant to section 101 of the Evidence Act, I have compared the signatures of Mr. Gboyega Fatimilehin and Mr. Akindele Akintoye in Form CAC 7 of Justin-J dated 8/12/2008 [Exhibit M; also Exhibit U], their signatures on the Board resolutions [Exhibits Q & V] which were not disputed on the one hand; and the signatures on Exhibits C, R, S & T on the other. My humble view is that the signatures in Exhibits C, R, S & T are similar to the signatures of Mr. Gboyega Fatimilehin and Mr. Akindele Akintoye in Exhibits M, Q & V. I agree with Mr. Edet that even if there is any dissimilarity in the signatures, the case of Ezechukwu v. Onwuka [2006] 2 NWLR [Pt. 963] 151 is authority for the principle that mere dissimilarity of two signatures is not conclusive evidence that they were not made by the same person.

The fifth point is that one of the reliefs of the plaintiffs/defendants to the counter claims in their suit is an order of the Court declaring the documents relied upon by the counter claimants as null, void and of no legal effect as they were not made by Justin-J. The plaintiffs' suit [including this relief] was



withdrawn and dismissed. The effect of the withdrawal and dismissal of this claim is that it has no merit. I take the considered view that the implication of, or inference to be drawn from, the withdrawal of the said claims is that Exhibits C, R, S & T are not forged.

The final point is that from the decision of the Court under Issue 1, Samuel Chen acted as agent or representative of Justin-J in the transaction that gave rise to this suit by virtue of its Board resolutions [Exhibits Q & V]. Thus, it is very unlikely that Exhibits C, R, S & T - by which the transactions over the land were consummated - were forged.

In arriving at the above decisions, I have taken into account the pleading of the defendants to the counter claims that Mr. Gboyega Fatimilehin whose signature appeared in Exhibit C as the secretary of Justin-J was never its secretary. I am of the humble opinion that this fact will not invalidate Exhibit C. I say so because by Exhibit FF [i.e. Form CAC 2.1, Particulars of Company Secretary] tendered by Mr. Edet through Barrister Aboje, Justin-J appointed Alliance Legal as its secretary on 10/11/2013. This means that on 28/2/2010 when Exhibit C was made, Justin-J did not have a company secretary. Besides, the unchallenged evidence of DW1 is that Justin-J had a practice of holding out its officers/agents to execute documents on its behalf as its secretary. The DW1 tendered Exhibit L [the power of attorney donated by Justin-J to Barrister Aboje] to prove that Umar Farouk Mohammed signed as the secretary of Justin-J on 16/11/2011.

From all that I have said, I hold that the defendants to the counter claimants failed to prove beyond reasonable doubt that Exhibits C, R, S & T were forged. Assuming they were able to prove their allegation of forgery, it is my view that this will not defeat the transaction, since, as I have found, Samuel Chen acted as the representative or agent of Justin-J and the counter claimants paid monies to Justin-J for the respective portions of Plot 4.

It remains to determine whether the counter claimants have acquired any interest or right over the respective portions of the said Plot 4. As correctly stated by Mr. Edet, it is the law that where a person pays for land followed by his going into possession and remaining in possession, equitable interest is created for him in the land such as would defeat the title of a subsequent legal estate purchaser with knowledge of the equitable estate or interest in the land. See the cases of Buraimoh v. Karimu [1999] 9 NWLR [Pt. 618] 310 and Kachalla v. Banki [2006] 8 NWLR [Pt. 982] 364. In Agbabiaka v. Okojie [2004] 15 NWLR [Pt. 897] 503, it was held that the payment of purchase price coupled with possession gives the purchaser an equitable title and he can seek an order for specific performance.

In the instant case, Exhibit J issued to Q-H by Samuel Chen as the agent of Justin-J is evidence that it paid N167,500,000 to Justin-J for the purchase of 28 hectares of Plot 4 leaving a balance of N32,500,000. It also relied on the Power of Attorney donated to it by Justin-J on 28/2/2010. I am mindful of the legal principle that a power of attorney is not an instrument which confers, transfers

or alienates any title to the donee. See the case of Ude v. Nwara [1993] 2 NWLR [Pt. 277] 638 for this principle.

However, I am of the view that when the power of attorney and Exhibit J are taken together, it becomes clear that a sale of 28 hectares of Plot 4 was intended by Justin-J in favour of Q-H. It is not in dispute that Q-H was in possession of 28 hectares of Plot 4 before the Court made an order on 24/7/2013 for the parties to maintain *status quo* in respect of the said Plot 4. I hold that Q-H has established an equitable title or interest over 28 hectares of the said Plot 4.

The Deed of Assignment [Exhibit S] executed between Justin-J and Newland shows that the latter paid the sum of N100,000,000 to the former for 20 hectares of the said Plot 4. The statement of account of Justin-J in FCMB [Exhibit Y] shows that N99,500,000.00 was paid by Newland. The oral evidence of DW3 is that cash of N500,000.00 was paid to Justin-J through its representative or agent, Samuel Chen. It is not in dispute that Newland was in possession of 20 hectares of Plot 4 before the Court made an order on 24/7/2013 for the parties to maintain *status quo* in respect of the said Plot 4. I hold that Newland has established an equitable title or interest over the 20 hectares of the said Plot 4.

I have considered the evidence of Barrister Onyilokwu Jude Aboje that Kosun entered into a sale transaction with Justin-J over Plot 4 for the purchase

price of N400 million out of which N180 million was paid. He relied on the Power of Attorney donated by Justin-J to him [Exhibit AA]; which was signed by Umar Farouk Mohammed on "16/12/11" although Kosun was not mentioned therein. Exhibits C, R, S & T were made in 2010. As correctly posited by Mr. Michael Edet, the law is that where there are competing interests to a piece of land from the same grantor or seller, such competing interests would rank according to the order of their creation. See **Kachalla v. Banki [supra]**. Therefore, the respective interests or titles of Q-H and Newland over Plot 4 will rank before the title or interest of Kosun or Barrister Aboje.

In the light of all that I have said on Issue 4, the decision of the Court is that Q-H has acquired equitable title or interest in and over 28 hectares of the said Plot 4 while Newland has acquired equitable interest or title in and over 20 hectares of the said Plot 4. The Court also holds that Q-H and Newland are entitled to an order of specific performance of their respective contracts with Justin-J.

## **ISSUE 5**

*Are the counter claims of Q-H and Newland against the 4<sup>th</sup> defendant [Hon. Minister of the Federal Capital Territory] incompetent?*

Q-H has 2 reliefs against the 4<sup>th</sup> defendant. Newland also has 2 reliefs against the 4<sup>th</sup> defendant. Mr. O. U. Heavens argued that the counter claims against the 4<sup>th</sup> defendant are unknown to the Rules of Court. He submitted that the

counter claims against 4<sup>th</sup> defendant are incompetent, illegal and are liable to be struck out. He referred to **Attorney-General of Cross Rivers State v. The Attorney-General of the Federation & Anor. [2005] 15 NWLR [Pt. 947] 71.**

Mr. Akintan posited that a counter claimant can maintain an action against a co-defendant and even a non-party. He relied on **Effiom v. Ironbar [2000] 11 NWLR [Pt. 678] 344;**and submitted that Q-Hcan maintain its counter claim against the 4<sup>th</sup> defendant. Similarly, Mr. Edet cited the case of **Akhigbe v. Paulosa [Nig.] Ltd. [2006] 12 NWLR [Pt. 994] 373**to support the view that a defendant can make a counter claim against an additional party on condition that the plaintiff is also a party to the counter claim.

In **Effiom v. Ironbar [supra]**, it was held that a defendant can counter claim against a plaintiff along with another person not already a party to the action provided that: [i] the relief sought in the counter claim is such that that other person is liable to the defendant along with the plaintiff in respect of the counter claim; or [ii] that the counter claim relates to or is connected with the subject matter of the plaintiff's claim.

The opinion of *Fidelis Nwadialo, SAN* at page 395 of the second edition of his Book, *Civil Procedure in Nigeria* is apt on this issue. He stated that:

*"A defendant may under certain conditions, counter-claim against some other person not a party in the action. The first of these conditions is that the plaintiff must be a defendant to the counter claim. In other words, in such a*

*counter claim the other person is an additional defendant. The defendant thus counterclaims against the plaintiff and that person. If the plaintiff is not defendant but only the person is, then there is no cross-action and consequently no counter-claim.*

*The other person may be a complete stranger to the action brought by the plaintiff or a co-defendant in that action. The defendant may counter-claim against the plaintiff and the person jointly in the alternative."*

From the foregoing, I resolve Issue 5 against the defendants to the counter claims. The decision of the Court is that the counter claims of Q-H and Newland against the 4<sup>th</sup> defendant are competent.

## **ISSUE 6**

*Are Q-H and Newland entitled to their respective reliefs in their counter claims?*

I adopt the decisions of the Court in respect of Issues 1-5. The verdict of the Court is that Q-H is entitled to its reliefs [i], [ii], [iv], [v], [vi] & [vii] of its counter claim. I also hold that Newland is entitled to reliefs [a], [b], [d], [f], [g] & [h] of its counter claim.

Relief [e] in the counter claim of Newland is an order for Justin-J to surrender the title document over Plot 4 to it. The transaction between Newland and Justin-J is not in respect of the entire Plot 4. It is my view that this order

cannot be granted in its favour. The order for specific performance and the other reliefs are sufficient to protect its title or interest in and over the 20 hectares of the said Plot 4.

Relief [viii] in the counter claim of Q-H and relief [i] of the counter claim of Newland are the same. They seek an order for 4<sup>th</sup> defendant [Hon. Minister of the Federal Capital Territory] to issue a new certificate of occupancy in their names in respect of 28 hectares and 20 hectares of Plot 4 respectively. I am of the considered view that for the counter claimants to be entitled to this relief, they must show that Justin-J was issued a certificate of occupancy over Plot 4 by the 4<sup>th</sup> defendant or that Justin-J is entitled to be issued a certificate of occupancy over the said Plot 4 by the 4<sup>th</sup> defendant. There is nothing before the Court to establish this fact. The said reliefs are refused.

## **CONCLUSION**

Judgment is entered in favour of the counter claimants [Quality Homes Multi Concepts Ltd. and Newland Habitat Ltd.].

I grant the following orders in favour of the 1<sup>st</sup> defendant/counter claimant [Q-H Multi Concepts Ltd.]:

1. A declaration that having regard to the Power of Attorney dated 28/2/2010 executed between Justin-J Global Ventures Ltd. and Q-H Multi Concepts Ltd., the Acknowledgement Receipt of Payment dated

19/3/2012 as well as the totality of the conduct of the two parties, a subsisting contract of sale of 28 hectares out of the entire parcel of land constituting Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja, exists between Justin-J Global Ventures Ltd. and Q-H Multi Concepts Ltd.

2. A declaration that the subsisting contract between Justin-J Global Ventures Ltd. and Q-H Multi Concepts Ltd. precludes Justin-J Global Ventures Ltd. from attempting to resell/re-alienate its interest in the aforementioned 28 hectares of land [subsumed in Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja] to Kosun Chemicals Ltd. or any other person whatsoever.
3. An order of specific performance mandating/compelling Justin-J Global Ventures Ltd. to honour the contract of sale of the 28 hectares of land [subsumed in Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja] betweenit [i.e. Justin-J Global Ventures Ltd.] and Q-H MultiConcepts Ltd. upon Q-H Multi Concepts Ltd. paying the sum of N32,500,000.00being the balance of the purchase price.
4. A perpetual injunction restraining Justin-J Global Ventures Ltd., its agents, assigns, privies, servants, officers or any person howsoever called from further wrongfully attempting to repudiate/negate the contract of sale of 28 hectares of land [subsumed in Plot 4, Cadastral



Zone D07, Sabo Gida District, Abuja] between it [Justin-J Global Ventures Ltd.] and Q-H MultiConcepts Ltd.

5. A perpetual injunction restraining Kosun Chemicals Ltd., its agents, assigns, privies, servants, officers or any person howsoever called from further wrongfully attempting to interfere with the lawful occupation of Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja by Q-H Multi Concepts Ltd.
6. An order directing the 4<sup>th</sup> defendant [Hon. Minister of the Federal Capital Territory] whether by himself, his agents, assigns, privies, officers, agencies and bodies under his watch or any person howsoever called to accord forthwith full recognition and all the requisite incidents of ownership to Q-H Multi Concepts Ltd. regarding the 28 hectares of Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja as depicted in the Schedule to the Power of Attorney dated 28/2/2010 executed between Justin-J Global Ventures Ltd. and Q-H Multi-Concepts Ltd. [i.e. the area covered by Beacon Numbers: PB194 – PB195 – PB196 – PB197 – PB198 – PB199 – PB200 – PB201 – PB202 – PB203 – PB204 – PB182 – PB183 – PB184 – PB185] upon completion of the payment of the total sum of N200,000,000.00 only by Q-H Multi Concepts Ltd. to Justin-J Global Ventures Ltd.

I grant the following orders in favour of the 3<sup>rd</sup> defendant/counter claimant [Newland Habitat Ltd.]:

1. A declaration that by virtue of the Power of Attorney dated the 4<sup>th</sup> day of October 2010, the Building Lease Agreement dated 4<sup>th</sup> day of October 2010 and the Deed of Assignment also dated the 4<sup>th</sup> day of October 2010 executed between Justin-J Global Ventures Ltd. and Newland Habitat Ltd. as well as the totality of the conduct of the two parties, there exists a subsisting contract of sale of 20 hectares of land out of the entire parcel of land known as Plot 4, Sabo Gida District Zone D07 Abuja, FCT which confers an equitable interest on Newland Habitat Ltd.
2. A declaration that having regards to the subsisting contract of sale of the said 20 hectares of land between Justin-J Global Ventures Ltd. and Newland Habitat Ltd. and the equitable interest of Newland Habitat Ltd. in respect of the said land, Justin-J Global Ventures Ltd. is incapable of any valid alienation or transfer of the said 20 hectares of land [subsumed in Plot 4, Sabo Gida District Abuja, FCT] to Kosun Chemicals Ltd. or any other person whatsoever.
3. An order of specific performance compelling/mandating Justin-J Global Ventures Ltd. to perform its obligation to Newland Habitat Ltd. appertaining to the 20 hectares of land in respect of Plot 4, Sabo Gida, Abuja.
4. An order of perpetual injunction restraining Justin-J Global Ventures Ltd., its servants, agents, assigns, privies or officers or any other person howsoever described from further interfering with the subsisting

contract between Justin-J Global Ventures Ltd. and Newland Habitat Ltd. over the 20 hectares of land comprised in Plot 4, Sabo Gida, Abuja.

5. An order of perpetual injunction restraining Kosun Chemicals Ltd., its servants, agents, assigns, privies or officers or any other person howsoever described from interfering with the lawful occupation of Newland Habitat Ltd.'s 20 hectares of land comprised in Plot 4, Sabo Gida, Abuja.
6. An order directing the 4<sup>th</sup> defendant [Hon. Minister of the Federal Capital Territory] whether by himself, his agents, privies, agencies/bodies under his control or any other person howsoever described to accord forthwith full recognition together with all the requisite incident of ownership to Newland Habitat Ltd. over the 20 hectares [200,000m<sup>2</sup>] of Plot 4, Cadastral Zone D07, Sabo Gida District, Abuja as shown in the Schedule contained in the Power of Attorney dated 4<sup>th</sup> October 2010 delineated by beacon Nos. PB186, PB187, PB188, PB189, PB190, PB191, PB192, PB193, PB194, PB<sup>B</sup>, PB<sup>A</sup> – PB; having paid the full consideration of N100 million to Justin-J Global Ventures Ltd. in respect of same.

The parties shall bear their costs.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of counsel:*

1. Akin AkintanEsq. for the 1<sup>st</sup> counter claimant.
2. Michael EdetEsq. for the 3<sup>rd</sup> counter claimant.
3. O. U. Heavens Esq. for the defendants to the counter claims; with ViviahAgbonEsq.